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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,318	03/01/2002	Gary J. Hydock	17851.0 (Hydock)	2105
1342	7590	02/24/2005	EXAMINER	
PHILLIPS LYTTLE LLP INTELLECTUAL PROPERTY GROUP 3400 HSBC CENTER BUFFALO, NY 14203-3509			BAXTER, GWENDOLYN WRENN	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/087,318

Applicant(s)

HYDOCK, GARY J.

Examiner

Gwendolyn Baxter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-6, 8, 10 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-6, 8 and 10 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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This is the fourth office action for application serial number 10/087,318, Modular Radiant Heat Panel System, filed on March 1, 2002.

The indicated allowability of claims 4-6, 8 and 10 is withdrawn in view of the reference(s) to Shelley 4,635,710. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 4, 6, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,635,710 to Shelley. The present invention reads on Shelley as follows: Shelley teaches a heat transfer panel comprising of a formed tray (26). The tray comprises a fixture tower (20) and defines a containment space (defined between 14 and 26) and a conduit channel (16). The space contains a thermal mass (30). The channel, containment space and thermal mass is configured and arranged to permit heat transfer between the channel and the thermal mass. The conduit channel is a U-shaped trough or is cylindrical. The conduit channel comprises a linear section and an arcuate section.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shelley in view of U.S. Patent No. 5,078,203 to Shiroki. Shelley discloses the claimed invention except for a side gusset.

Shiroki teaches a panel having a plurality of supports or gusset (4) located internally therein. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the panel as taught by Shelley to have incorporated the gusset as taught by Shiroki for the purpose of reinforcing the panel.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shelley in view of U.S. Patent No. 4,865,120 to Shiroki. Shelley discloses the claimed invention except for the thermal mass comprises a composition selected from a group consisting of cement, mortar, ceramic, concrete and stone.

Shiroki teaches the thermal mass comprising a concrete layer (see col. 2, line 22+). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the thermal mass as taught by Shelley to have incorporated the concrete layer as taught by Shiroki for the purpose of promoting heat transfer between components.

Allowable Subject Matter

Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 4-6, 8, and 10 have been considered but are moot in view of the new grounds of rejection.

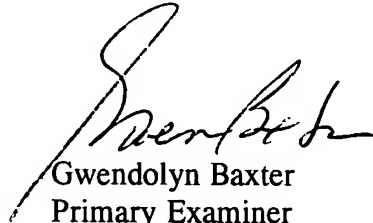
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gwendolyn Baxter whose telephone number is 703-308-0702. The examiner can normally be reached on Monday-Wednesday, 8:00am -5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A Braun can be reached on 703-308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gwendolyn Baxter
Primary Examiner
Art Unit 3632

February 21, 2005